WP(C) 2426/2007
BEFORE
THE HON'BLE MR JUSTICE AFTAB H SAIKIA

JUDGMENT AND ORDER (ORAL)

Heard learned counsel for the parties including the learned departmental counsel representing the official respondents.

2. Taking into account the issue raised in this writ petition and upon hearing learned counsel for the parties, this Court proposes to dispose of this writ petition today itself at admission stage..

3. The basic issue that posed before this Court is that instead of finalisation of the settlment of the Boralimari-Gadhuwa Commercial Cargo-Passenger Ferry Service (for short, 'the Ferry') pursuant to the Notice inviting tender(for short,'NIT') dated 3.11.06 in which the petitioner has also participated, the respondent authority made direct settlement of the Ferry with Respondent No.3 for one year w.e.f. 17.6.07 to 16.6.2008 without assigning any valid reasons thereof..

4. .On 3.11.2006 the competent authority, Respondent No.2, the Director, Inland Water Transport, Assam floated NIT for settlement of the Ferry for a period of 1 year (2007-08) fixing the last date of submission of such tender on 4.12.2006, the date on which tender was also scheduled to be opened..

5. Meanwhile, one Md. Nurul Islam, the sitting lessee for the period of 2006-07 whose turn is going to be expired on 16.6.07, has approached this Court by filing W.P.' No. 5928/06 with a prayer to allow him to complete his term of settlement till 16.6.2007 keeping the NIT dated 3.11.2006 in abeyance.

6. This Court vide order dated 1.12.2006, at the time of issuance of notice making it returnable to a date on 20.12.06 passed an interim order as below:

Meanwhile, till the returnable date, in the interim, it is provide that the Respondent shall process the matter but no final order shall be passed in pursuance of the tender notice dated 3.11.2006(Annexure-D to the writ petition) Pendency of this writ petition shall not be a bar for the petitioner to participate in the tender process in NIT dated 3.11.2006 as aforesaid.

7. In pursuance of the said NIT, the petitioner along with others submitted their respective tenders and are waiting for the result of the settlement of the Ferry.

8.. Notwithstanding the above direction vide order dated 1.12.2006,, it is pleaded in this writ petition that without finalisation of the tender process as indicated above by the interim order dated 1.12.06, the respondent No.2 settled the Ferry with Respondent No.3 surreptitiously without considering the tenders so submitted by the petitioner along with others although, pursuant to NIT dated 3.11.2006 the petitioner along with others participated in the process wherein the petitioner quoted his bid at Rs.2,25,000/- when the bid of Respondent No.3 was at Rs.90,000/-.

9. On meticulous inspection of the records so made available and placed by the learned departmental counsel, it appears that entire process of the NIT pursuant to which the petitioner along with others participated, has been abruptly a

bandoned by the competent authority, who in turn settled the Ferry directly with Respondent No.3 w.e.f. 17.6.07 to 16.6.08 without assigning any reasons whatsoever and also behind the back of the petitioner including other tenderers..

10. It is established law that the distribution of State largesse by the authority must be based on equity,fairness, reasonableness and justness. Action needs to be free from arbitriness not affected by bias or actuated by mafides. The tender system is a process wherein transparency and fairness are expected.

11. In the case in hand, for settement of the Ferry, the respondent authority initially floated the NIT on 3.11.06 but no final order can be passed on the said NIT due to interim order passed by this Court in W.P. (C) No. 5928/06 as quoted above.

12. Nevertheess , It is amazing to note that despite the operation of the interim order quoted above and without having considered the bids of the petitioner with other tenderers so quoted pursuant to the NIT in question, how the authority can directly, without informing the Court, abandoned such process under the NIT and settled the Ferry with the Respondent No.3 to the exclusion of all the participants, who have been waiting to get their tenders to be processed in accordance with law. It is also brought to the notice of this Court by the learned departmental counsel that while making such direct settlement, the Respondent No.3 was the only person and no other tenderers who have already participated in process, have been informed as regards such direct settlement.

13. In view of the above situation, this Court is of the considered view that the impugned settlement of the Ferry with Respondent No.3 smacks nepotism and favourtism and the same lacks fairness ,transparency and openness and it therefore,is liable to be quashed.

14. Consequently, the impugned settlement with the Respondent No.3 stands quashed and set aside.

15. In view of such quashment of the impugned settlement of the Ferry with Respondent No.3, the Respondent No.2, Director, Inland Water Transport, Ulubari is hereby directed to initiate the entire process for finalisation of settlement pursuant to the NIT dated 3.11.2006 which is going to be effective w.e.f. 17.6.07 to 16.6.2008.

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16. At this juncture, the learned counsel for the parties have stated that in view of the disposal of this writ petition to day, pending the Writ petition No. (C) No. 5928/06 wherein the interim order was passed on 1.12.06 staying the NIT dated 3.11.06 has been rendered infructuous and in this connection they have undertaken to mention the matter before the appropriate Court for closing the said W.P. (C) No. 5928/06 as being infructuous..

17. It is also stated at Bar that the Respondent No.3 has already submitted his tender in such process which is evident from the record. The case of the Respondent No.3 herein also therefore, be considered along with all other participants. in the process of the settlement of the Ferry pursuant to NIT dated 3.11.2006.

18. The entire process as indicated above, shall be undertaken and completed within a period of 30 days from the date of receipt of the certified copy of this order..

19. Be it also made clear that before the fresh settlement is made as indicated above, on expiry of the settlement period of the present sitting lessee on 15.6.2007, the department concerned shall take over the administration and management of the Ferry and run the same w.e.f. 16.6.2007 till the finalisation of th

e tender process aforesaid ...
20. With the aforesaid observation and direction, this writ petition stands disposed of.